

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.248 OF 2007
IN
CRIMINAL APPEAL NO.1180 OF 2006**

Kerba Janardhan Gaikwad ...Applicant.
V/s.
The State of Maharashtra & Anr. ...Respondents.

Shri Ujwal Agandsurve, adv. for the Applicant.
Shri D.P.Adsule, APP for the Respondent/State.

**CORAM: J.H.BHATIA, J.
DATE : 30TH April, 2007.**

P.C.:

1. Heard Mr.Agandsurve the learned counsel for the Applicant and Mr.Adsule, the learned APP for the State.

2. The applicant, who is original accused no.1 was convicted for the offence punishable under Section 304(II) of the I.P.C. and was sentenced to undergo R.I. for 10 years and to pay fine of Rs.5,000/- in default to pay fine to undergo further R.I. for one year. The applicant has preferred an appeal challenging the conviction and sentence. Appeal is admitted. By this application, he seeks to be released on bail pending the appeal.

3. Prosecution case in brief, is that Mr.Yashwant Sonawane had constructed a shed on the premises of Suman

Gaikwad. Due to this on 20-6-2005 at about 5.00 p.m. some quarrel was going on between the accused persons and Yashwant Sonawane. At that time the deceased Prakash Sitaphale reached there and asked the accused persons as to why they were quarrelling. On this the accused no.1, who is present applicant got annoyed and asked Prakash as to how he was concerned with their quarrel. Saying so the present applicant picked up stone and hammered on the head of the deceased due to which he collapsed. He was taken to the hospital wherein he was operated and about 8 days after the incident, he died. Admittedly the applicant/accused had no quarrel with Prakash nor there was any previous enmity. The present applicant picked up a stone and hammered on the head of the Prakash by giving single blow, which resulted in internal haemorrhage and death. The accused is convicted for the offence punishable under Section 304(II) of the IPC. It appears that the learned Trial Court awarded maximum sentence of imprisonment permissible under Section 304(II) of the I.P.C. The applicant is in jail for the last about 2 years. Taking into consideration all the circumstances, I find that bail may be granted to the applicant.

4. Pending the appeal, the applicant is granted bail on his executing P.R.Bond of Rs.15,000/- with

surety in the like amount subject to his depositing fine amount.

(J.H.Bhatia,J.)